

09/463,423

REMARKS

Australian Nuclear Science & Technology Organization, the second assignee of the above identified application, recently decided to assign all of its right, title and interest in the above identified application to CRC for Waste Management & Pollution Control Limited--originally the office of the undersign though that CRC for Waste Management & Pollution Control Limited was to assign its right, title and interest in the above identified application to Australian Nuclear Science & Technology Organization. An assignment, confirming is this decision by Australian Nuclear Science & Technology Organization (see attached), is currently in the process of being signed and, as soon as this occurs, the signed Assignment will be forwarded to the United States Patent and Trademark Office for recordation. As a result of this Assignment, all right, title and interest in the above identified application will be owned solely by CRC for Waste Management & Pollution Control Limited.

Claims 10-17 are rejected under the judicially created doctrine of double patenting over the claims of United States Patent No. 5,688,378 in view of WO 95/11195 since the claims of the above identified application, if allowed, would improperly extend the "right to exclude" already granted in the above indicated issued patent.

In response to this rejection, enclosed is a signed Terminal Disclaimer which refers to both serial no. 09/463,423 and United States Patent No. 5,688,378. As the official fee for the Terminal Disclaimer was already paid, a further disclaimer fee is not believed necessary or payable. However, in the event that a further disclaimer fee is due and payable, please charge the same to our deposit account. In view of the attached Terminal Disclaimer, it is respectfully submitted that the raised double patenting rejection is overcome.

Claims 10-17 are rejected, under 35 U.S.C. § 102, as being anticipated in view of Khoe WO 95/11195 while claims 18-25 are rejected, under 35 U.S.C. § 103, as being unpatentable over Khoe WO 95/11195 ("Khoe `195") in view of Frame et al., U.S.P.N. 5,238,581 ("Frame et al. `581"). The Applicant acknowledges and respectfully traverses both of the raised obviousness rejections in view of the following remarks.

As the Examiner is aware, in order to properly support an obviousness type double patenting rejection under 35 USC §103, the applied references must provide some disclosure, teaching, suggestion or motivation that would lead one of ordinary skill in the art to combine the references as alleged by the Examiner. The Applicant respectfully submits that the applied combination of Khoe `195 and Frame et al. `581. fails to contain the necessary required by case law.

WO 95/11195 arguably relates to photoassisted oxidation of dissolved species, however, this reference teaches that in the oxidizing of Fe(II) to Fe(III), sulphur, S(IV), can be used as a substance "which is both capable of being oxidized and increasing the rate of

reaction of Fe(II) to Fe(III)". WO 95/11195 does not in any way teach, suggest or disclose sulphur as an oxidizing source or photoabsorber. In fact, WO 95/11195 very clearly teaches, suggests and discloses that the photoabsorber is a dissolved cationic metal species such as Fe(II) or Fe(III), Cu²⁺, etc. (see page 3, lines 27 to 33).

(3) Further, Frame et al. '581 relates to oxidative removal of cyanide from aqueous streams abetted by UV irradiation, however, this oxidation with UV irradiation occurs only when certain metal chelates are used as catalysts. These chelates may be used to enhance oxidation of the cyanide by irradiating the aqueous stream with UV light. This is in distinct contrast to the above identified application which occur without use of any chelate(s) during the oxidization of the inorganic species other than iron(II). The specific references of Frame et al. '581 cited by the Examiner (col. 2 line 11 and lines 24-27 and col 2. Line 12) refer to a less effective process of using a Cu catalyst in conjunction with a sulfate and air to oxidize cyanide.

Even if the two references could be properly combined in an obviousness-type rejection, and the Applicant adamantly denies this possibility, such a combination still fails to teach, suggest or disclose the specifically recited features of the presently claimed invention, namely, ".....supplying an oxidizable source of sulphur and oxygen to the solution", as recited in claim 10. In fact, in view of the clearly disclosed species of photoabsorbers in both references, none of which includes sulphur, a combination of these references not only fails to teach the use of sulphur as a photoabsorber as alleged by the Examiner, by specifically reciting the alternatives, actually teaches away from the use of any other substances other than those disclosed.

In view of the above the Applicant believes that these references are not only uncombinable, but that even if a combination is proper, and this is not conceded, the presently claimed invention is not disclosed, taught, or suggested in any manner. Therefore the Applicant respectfully requests withdrawal of the obviousness type double patenting rejection. As claims 11-17 are dependent upon claim 10, which is believed allowable in view of the above discussion, these claims are believed allowable for the same reasons.

Claims 18-25 and new claims 26-29 further clarify the above noted distinctions between the presently claimed invention and the applied prior art.

If any amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the Khoe '195 and/or Frame et al. '581 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which

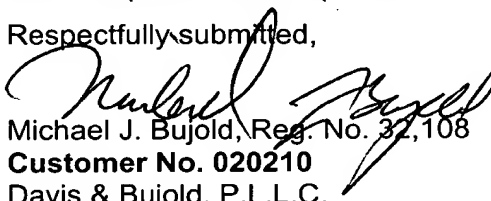
09/463,423

contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



Michael J. Bujold, Reg. No. 32,108

Customer No. 020210

Davis & Bujold, P.L.L.C.

Fourth Floor

500 North Commercial Street

Manchester NH 03101-1151

Telephone 603-624-9220

Facsimile 603-624-9229

E-mail: patent@davisandbujold.com

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service, with sufficient postage, as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231 on August 4, 2003.

By: 

Print Name: Michael J. Bujold